

8-1004-8555-2

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA DEPARTMENT OF COMMERCE

In the Matter of Keystone
State Life Insurance Co.,
a Pennsylvania Corporation,
Doing Business in the State of
Minnesota

FINDINGS OF FACT, CONCLUSIONS AND RECOMMENDATION

The above-entitled matter came on for hearing before Administrative Law Judge Jon L. Lunde on Wednesday, March 30, 1994 at the Office of Administrative Hearings in Minneapolis, Minnesota. The hearing was held pursuant to a Notice of and Order for Hearing and Order to Show Cause dated January 25, 1994. The record closed at the conclusion of the hearing on March 30, 1994.

Michael A. Sindt, Assistant Attorney General, 1200 NCL Tower, 445 Minnesota Street, St. Paul, Minnesota 55101-2130, appeared on behalf of the Minnesota Department of Commerce (Department). Roderic H. Ross, President and Chief Executive Officer, Keystone State Life Insurance Company, 1401 Walnut Street, Philadelphia, Pennsylvania 19102, appeared on behalf of Keystone State Life Insurance Company (Keystone or Respondent).

This Report is a recommendation, not a final decision. The Commissioner, Minnesota Department of Commerce will make the final decision after a review of the record and may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations contained herein. Pursuant to Minn. Stat. 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Gary A. Lavasseur, Deputy Commissioner, Enforcement and Licensing Divisions, Minnesota Department of Commerce, 133 East 7th Street, St. Paul, Minnesota 55101, telephone (612) 296-2594, to ascertain the procedure for filing exceptions or presenting argument.

STATEMENT OF ISSUES

The issues in this case are whether Respondent sold life insurance policies within the State of Minnesota without a certificate of authority to do so in violation of Minn. Stat. 60A.07, subd. 4 and 72A.41, subds. 1 and 2 (1992), and if so, whether civil penalties should be assessed against the Respondent under Minn. Stat. 45.027, subd. 6 and 72A.44 (1992).

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Keystone State Life Insurance Company is a Pennsylvania corporation which was organized on January 31, 1985. Ninety percent of its stock is owned by five institutional investors: an automobile club, a fire insurance company, a bank, a corporate conglomerate, and a mortgage banker. Keystone is a small insurance company. It's licensed in 15 states. It has approximately \$1 billion of insurance in force, 9200 policyholders, \$30 million in assets and 19 employees, three of whom are part time. Roderic H. Ross is its president and chief executive officer.

2. At all times material to this proceeding, Thomas M. Baumgartner was licensed in the state of Minnesota as an independent insurance agent. Ross has known Baumgartner and other members of his family for well over 20 years. Ross once was president of Philadelphia Life. For ten years Philadelphia Life did business in Minnesota and was represented by the Baumgartner agency in Bemidji, Minnesota. The agency also had offices in Hibbing and the Twin Cities. When Thomas Baumgartner moved to California, he requested authorization to sell life insurance for Respondent. Although Thomas Baumgartner resided in California, Ross knew that he would serving Minnesota clients as well.

3. Between April 24, 1990 and December 10, 1992 Respondent issued 66 life insurance policies to Minnesota residents. All the policies were sold by Thomas Baumgartner. The face amount of the policies Baumgartner sold for Respondent totaled \$3,861,551. As of April 16, 1993, Respondent had collected \$167,762.69 in premiums from Minnesota residents on those policies and paid commissions of \$30,830.34 to Baumgartner for the 66 policies sold to Minnesota residents. Exhibit 5.

4. At the time the 66 policies were sold to Minnesota residents by Baumgartner, Keystone did not have a certificate of authority or any license authorizing it to sell insurance in the State of Minnesota. Ex. 6. Moreover, at those times, it was not a member insurer of the Minnesota Insurance Guaranty Association under Minn. Stat. 60C.03, subd. 6.

5. Although Respondent is not now and never has been licensed to sell insurance in the State of Minnesota, it has paid all premium taxes owed with respect to the 66 insurance policies sold to Minnesota residents. Only one death claim has arisen under

the 66 policies. Half of that claim was paid by Keystone and the other half was paid by its reinsurer.

6. Shortly after Baumgartner obtained authorization to sell insurance for the Respondent, Respondent submitted an application for licensure to the Department. The application was filed July 16, 1990, somewhat less than two months after the first insurance policy Baumgartner sold was issued to a Minnesota resident. Although Respondent knew it was not licensed in Minnesota and that Baumgartner was selling policies to Minnesota residents, it continued to issue policies to Minnesota residents after that time. Ross was interested in helping Baumgartner because of his long-time connection with Baumgartner and his family and because of marital problems and unresolved career choices Baumgartner faced.

7. On October 12, 1992, the Department's insurance and registration division wrote to Respondent after noting that Respondent had been reporting premiums in Minnesota. On January 4, 1993, Keystone responded acknowledging that its agent in California had sold life insurance policies in Minnesota on Respondent's behalf. On January 11, 1993, the insurance and registration division reported the sales to the enforcement division. Ex. 2.

8. On January 28, 1993, Pamela E. Gergen, a senior commerce investigator, wrote to Keystone to obtain information regarding the policies sold to Minnesota residents. Respondent provided the requested information and letters dated February 8 and April 16, 1993.

9. On June 3, 1993, Thomas Baumgartner agreed to the Commissioner's issuance of a Consent Order relating to the sales of Respondent's policies. Under the Order, Baumgartner was prohibited from selling insurance in Minnesota from May 15 to September 15, 1993. Exhibit 12.

10. On January 25, 1994, the Department, by its deputy commissioner, issued a Notice of and Order for Hearing and Order to Show Cause why Respondent should not be subject to civil penalties for issuing policies to Minnesota residents without having a certificate of authority to sell insurance in the State of Minnesota. This hearing followed.

Based on the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Commissioner of the Minnesota Department of Commerce and the Administrative Law Judge have authority to consider the issues raised by the Notice of and Order for Hearing and Order to Show Cause under Minn. Stat. 60A.03, subds. 2 and 3, 45.027, subd. 1(3), 72A.44, 14.50 and 14.57 (1992).

2. The Department gave proper and timely notice of the hearing to Respondent and has otherwise complied with all

relevant substantive and procedural requirements of statute and rule.

3. The Department has the burden of proof to establish by a preponderance of the evidence that the Respondent sold life insurance policies to Minnesota residents without being properly licensed under Minn. Rules, pt. 1400.7300, subd. 5 (1991).

4. Respondent sold 66 life insurance policies to Minnesota residents in the years 1990 through 1992 for purposes of Minn. Stat. 60A.02, subd. 3 and 60A.07, subd. 4 (1990).

5. The Department established that the Respondent transacted insurance business in the State of Minnesota without a certificate of authority for purposes of Minn. Stat. 72A.41, subds. 1 and 2 (1990).

6. As a result of the Respondent's unauthorized sale of insurance policies to Minnesota residents and transacting business in Minnesota without a license Respondent violated the provisions of Minn. Stat. 60A.07, subd. 4 and 72A.41, subds. 1 and 2 (1990).

7. As a result of the Respondent's statutory violations it is subject to civil penalties pursuant to Minn. Stat. 45.027, subd. 6 (1990) and 72A.44 (1990).

Based upon the foregoing Conclusions of Law, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED: That the Commissioner of Commerce impose civil penalties on the Respondent for its statutory violations and that the civil penalties imposed be not less than \$100 for each of the 66 policies sold.

Dated this 6th day of April, 1994.

/s/ Jon L. Lunde

JON L. LUNDE
Administrative Law Judge

NOTICE

Pursuant to Minn. Stat. 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail.

Reported: Taped

MEMORANDUM

The evidence presented in this case clearly shows that Respondent knowingly sold life insurance policies to Minnesota residents without a license. Mr. Ross argued that it did not have any evil intent but was merely trying to help a struggling agent. His desire to help Baumgartner did not justify the continued sales of insurance policies to Minnesota residents without a proper license.

Mr. Ross testified that an application for licensure was filed shortly after the first policy Baumgartner sold to a Minnesota resident was issued. He also stated that when Respondent discovered that Baumgartner was selling policies to Minnesota residents it immediately applied for a certificate of authority. It is clear, therefore, that Respondent knew, at least by June 13, 1990 when its license application was filed, that Baumgartner was making unauthorized insurance sales in this state. In spite of this knowledge, Respondent continued to issue policies Baumgartner sold to Minnesota residents. Respondent knowingly and intentionally continued to violate Minnesota statutes after it originally became aware that unlawful sales were taking place. Mr. Ross's argument that the illegal sales were not made out of a sense of "malignancy" does not justify them. Even though Respondent may have desired to help Baumgartner, that intention did not justify the continuous violations that occurred. The civil penalty assessed should reflect the deliberateness of the violations.

Although Mr. Ross suggested, at one point, that he was unaware that policies were being sold to Minnesota residents until he heard from the Department's investigator in 1993, that testimony is wholly inconsistent with his earlier testimony that the license application was filed in June 1990 when Respondent realized that Baumgartner was selling life insurance policies to Minnesota residents. Mr. Ross also argued that sales after July 16, 1990 should be excused because Respondent expected its application for licensure to be promptly granted. He also suggested that no life insurance policies were sold to Minnesota residents because all 66 policies were dated in California. Both arguments must be rejected. Even if Respondent expected prompt approval of its application for licensure, the continued sales of life insurance policies to Minnesota residents without a license was not justified on that ground. Furthermore, the fact that the policies were dated in Minnesota is immaterial. The sales were clearly made to Minnesota residents and Mr. Ross indicated that he was aware that Baumgartner continued to serve Minnesota residents after moving to California.

JLL